IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 464 of 2007

BANSHI LAL
V/S
A.C.J.(J.D.)NO.1,SRIGANGANAGAR & ORS.

Mr. JK BHAIYA for Mr. SAJJAN SINGH, for the appellant / petitioner

Mr. RS CHOUDHARY for Mr. GR PUNIA) for the respondent
Mr. YASHWANT MEHTA)

Date of Order : 30.7.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties.

By the impugned order, the learned trial court has dismissed the petitioner's application for taking the written statement on record.

The learned trial court has held, that written statement was not filed within 90 days, while the case of the petitioner is, that by accidental error it could not be filed, and according to the learned trial court the petitioner cannot take advantage of its lapse. Then, it is observed, that vide order dt. 21.5.2005, right of the defendants to file reply had been closed, which included the petitioner.

Arguing the writ petition it is contended, that the petitioner is a directly effected person, as the suit basically seeks to have his shop closed, and also submits, that in the order dt. 21.5.2005, there is no mention of closure of the right of defendants to file written statement.

In my view, may be that the defendant petitioner had been seriously negligent, so much so, that as submitted that he had filed reply in temporary injunction, and remained under mistake, that it has been filed in the suit also, and therefore, the delay should be condoned, and the written statement should be taken on record, while it appears from the facts disclosed by the learned counsel for the petitioner, that in the injunction proceedings also the reply was not filed within the time permitted by the C.P.C.

However, considering totality of circumstances, I think it proper to allow the written statement to be taken on record, subject to payment of heavy costs.

Accordingly, the writ petition is allowed, and the impugned order is modified, in the manner, that if the petitioner pays a cost of Rs. 10,000/-, on or before next date of hearing, fixed before the learned trial court, the written statement already filed on 5.9.2006 shall be taken on record, and the learned trial court will thereafter

proceed with the trial of the suit.

It is made clear, that if the petitioner fails to pay cost, as above, the writ petition will stand dismissed, and the impugned order shall revive.

(N P GUPTA),J.

/sushil/